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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Maria Calvillo,

Plaintiff

v.

Experian Information Solutions, Inc.,

Defendant

Case No.: 2:19-cv-00279-JAD-BNW

Order (1) Granting in Part Motion to Dismiss, (2) Denying Motion to Stay Discovery, (3) Denying as Moot Motion for Protective Order, and (4) Granting Motion for Leave to Submit Supplemental Authority

[ECF Nos. 12, 18, 19, 45, 46]

Maria Calvillo sues consumer reporting agency Experian Information Solutions, Inc., claiming that Experian violated its disclosure duties under the Fair Credit Reporting Act (FCRA)¹ and Nevada law.² She also claims that Experian violated its duty under the FCRA to reasonably investigate her dispute about the accuracy of information that it furnished in consumer reports on her. Calvillo further contends that Experian failed to use FCRA-mandated reasonable procedures to ensure the maximum accuracy of information that it reported on her and engaged in deceptive trade practices in violation of Nevada law.³

Calvillo amended her complaint once as a matter of right after Experian moved to dismiss the claims in her original pleading.⁴ Experian now moves to dismiss Calvillo's amended claims with prejudice, arguing that she has not plausibly stated any claim for which she is entitled to

¹ 15 U.S.C. §§ 1681 et seq.

² See generally ECF No. 10 (first-amended complaint).

³ *Id.*

⁴ ECF Nos. 1 (original complaint), 7 (motion to dismiss), 10 (first-amended complaint).

1 relief and that she failed to plead fraud with the required particularity.⁵ Experian also moves to
2 stay discovery pending a ruling on its dismissal motion and for a protective order to prevent
3 Calvillo from taking any discovery pending my stay decision.⁶ Finally, Calvillo moves to
4 supplement her response to Experian’s dismissal motion with new Ninth Circuit authority.⁷

5 For the reasons discussed below, I grant in part the motion to dismiss, deny the motion to
6 stay discovery, deny as moot the motion for a protective order, and grant the motion to submit
7 supplemental authority without further briefing. The upshot of my decision on the dismissal
8 motion is that I construe each alleged violation as its own claim for relief, allow Calvillo to
9 proceed on three of her claims, grant her leave to amend five others, and dismiss her remaining
10 five claims with prejudice.

11 **I. Motion to dismiss [ECF No. 12]**

12 **A. Legal standard for dismissal under Rule 12(b)(6)**

13 Federal Rule of Civil Procedure 8 requires every complaint to contain “[a] short and plain
14 statement of the claim showing that the pleader is entitled to relief.”⁸ While Rule 8 does not
15 require detailed factual allegations, the properly pled claim must contain enough facts to “state a
16 claim to relief that is plausible on its face.”⁹ This “demands more than an unadorned, the-
17 defendant-unlawfully-harmed-me accusation”; the facts alleged must raise the claim “above the
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20 ⁵ ECF No. 12.

21 ⁶ ECF Nos. 18 (motion to stay discovery), 19 (motion for a protective order).

22 ⁷ ECF Nos. 45, 46 (corrected image). Calvillo does not seek leave to submit further briefing.

23 ⁸ Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*,
556 U.S. 662, 678–79 (2009).

⁹ *Twombly*, 550 U.S. at 570.

1 speculative level.”¹⁰ In other words, a complaint must make direct or inferential allegations
2 about “all the material elements necessary to sustain recovery under *some* viable legal theory.”¹¹

3 District courts employ a two-step approach when evaluating a complaint’s sufficiency on
4 a Rule 12(b)(6) motion to dismiss. The court must first accept as true all well-pled factual
5 allegations in the complaint, recognizing that legal conclusions are not entitled to the assumption
6 of truth.¹² Mere recitals of a claim’s elements, supported by only conclusory statements, are
7 insufficient.¹³ The court must then consider whether the well-pled factual allegations state a
8 plausible claim for relief.¹⁴ A claim is facially plausible when the complaint alleges facts that
9 allow the court to draw a reasonable inference that the defendant is liable for the alleged
10 misconduct.¹⁵ A complaint that does not permit the court to infer more than the mere possibility
11 of misconduct has “alleged—but not shown—that the pleader is entitled to relief,” and it must be
12 dismissed.¹⁶

13 **B. Factual allegations**

14 I begin by identifying some of the well-pled factual allegations in Calvillo’s first-
15 amended complaint that are entitled to the assumption of truthfulness. Calvillo alleges that she
16 voluntarily filed a petition under Chapter 13 of the Bankruptcy Code on April 20, 2011.¹⁷ At the
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18 ¹⁰ *Iqbal*, 556 U.S. at 678.

19 ¹¹ *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106
20 (7th Cir. 1989)) (emphasis in original).

21 ¹² *Iqbal*, 556 U.S. at 678–79.

22 ¹³ *Id.*

23 ¹⁴ *Id.* at 679.

¹⁵ *Id.*

¹⁶ *Twombly*, 550 U.S. at 570.

¹⁷ ECF No. 10 at ¶ 14.

1 time of her petition, Calvillo owned real property that was subject to a first mortgage deed of
2 trust.¹⁸ During her bankruptcy, the servicing of that loan was transferred to Nationstar
3 Mortgage.¹⁹ The bankruptcy court entered an order confirming Calvillo’s Chapter 13 plan on
4 October 5, 2011.²⁰ Calvillo alleges that, under the terms of the plan, she was required to make
5 ongoing payments on the mortgage serviced by Nationstar and that her payments to Nationstar
6 were current as of her petition date.²¹ She also alleges that the bankruptcy court granted her a
7 discharge on July 15, 2016, after she tendered all of the payments under her Chapter 13 plan.²²

8 Calvillo alleges that, on September 1, 2016, Experian provided her a document labeled
9 Report No. 0019-5853-35, which she contends is a FCRA § 1681g consumer disclosure.²³ She
10 calls this document either the “Experian Consumer Disclosure” or the “Credit File.”²⁴ I call it
11 the 2016 Document.²⁵ Calvillo further alleges that, on March 22, 2017, Experian provided her a
12 document labeled Report No. 4190-5654-63, which she contends is both a § 1681g consumer
13 disclosure and a § 1681i consumer report.²⁶ She calls this document the “First Experian Report.”
14 I call it the 2017 Document. Calvillo alleges that she disputed Experian’s failure to furnish the
15 positive payment history for her Nationstar account in the 2017 Document on February 27,

16 ¹⁸ *Id.* at ¶ 15.

17 ¹⁹ *Id.*

18 ²⁰ *Id.* at ¶ 16.

19 ²¹ *Id.*

20 ²² *Id.* at ¶ 18.

21 ²³ *Id.* at ¶ 31.

22 ²⁴ *Id.*

23 ²⁵ “Report,” “disclosure,” “consumer’s file,” and “credit file” are terms of art with defined
24 meanings under the FCRA or its interpretive case law. By naming the documents that her claims
25 turn with these labels, Calvillo has not charged them with the meanings ascribed to them under
26 the FCRA and case law. To avoid this confusion, I have eschewed Calvillo’s labels.

27 ²⁶ ECF No. 10 at ¶ 31.

1 2018.²⁷ Finally, Calvillo alleges that, on March 15, 2018, Experian provided her a document that
2 she contends is both a § 1681g consumer disclosure and a § 1681i consumer report and is labeled
3 Report No. 1803-4995-13.²⁸ She calls this document either the “Experian Reinvestigation” or
4 the “Second Experian Report.”²⁹ I call it the 2018 Document.

5 Experian provides copies of the 2017 and 2018 Documents with its dismissal motion and
6 asks me to consider both in deciding its motion.³⁰ Calvillo identifies and repeatedly references
7 the 2017 Document in her first-amended complaint.³¹ She also repeatedly references the 2018
8 Document in her pleading.³² These documents are integral to Calvillo’s claims that Experian
9 failed to provide clear and accurate disclosures, failed to take reasonable steps to ensure that the
10 information it reported about her was accurate, and failed to reasonably reinvestigate her dispute.
11 Thus, these documents fall under the doctrine of incorporation by reference, and I may consider
12 them in determining Experian’s dismissal motion without converting the motion into one for
13 summary judgment.³³

14 **C. Discussion**

15 Calvillo alleges that Experian violated three different sections of the FCRA (§§ 1681e,
16 1681g, 1681i) and one provision of Nevada’s consumer-reporting scheme (NRS § 598C.130).
17 She also alleges that these violations constitute deceptive trade practices under Nevada law (NRS
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19 ²⁷ *Id.* at ¶ 35.

20 ²⁸ *Id.* at ¶ 31.

21 ²⁹ *Id.*

22 ³⁰ ECF Nos. 12-2 (2017 Document), 12-3 (2018 Document).

23 ³¹ *See* ECF No. 10 at ¶¶ 31–32, 58–59, 65, 69, 95, 102, 108, 126–27.

³² *See id.* at ¶¶ 31–32, 58, 60, 101–02, 106, 108, 112, 114, 123, 126–27.

³³ *See U.S. v. Ritchie*, 342 F.3d 903, 907–08 (9th Cir. 2003).

1 §§ 598.0915(5) and 598.0923(3)) for which she can recover as a fraud victim (NRS § 41.600).
2 Calvillo lumps all of the alleged violations under three generically pled claims: (1) violation of
3 the FCRA, (2) violation of NRS § 41.600, and (3) violation of NRS Chapter 598C.³⁴ For the
4 sake of clarity, I refer to each alleged violation as a separate claim for relief,³⁵ and I begin with
5 the claims alleging a failure to disclose.

6 ***1. Failure-to-disclose claims under FCRA § 1681g and NRS § 598C.130***

7 FCRA § 1681g(a) requires a consumer reporting agency to, “upon [the] request” of a
8 consumer who furnishes proper identification, “clearly and accurately” disclose six categories of
9 information.³⁶ Relevant here are the paragraphs of § 1681g(a) that require a reporting agency to
10 provide (1) all of the information that is in the consumer’s file at the time of her request and
11 (2) the identity of each person who procured a consumer report for either “employment purposes,
12 during the 2-year period preceding the date” of the request or “for any other purpose, during the
13 1-year period preceding the date” of the request.³⁷

14 Nevada Revised Statute (NRS) § 598C.130 similarly requires a reporting agency to
15 “clearly and accurately disclose to the consumer the nature and substance of the consumer report
16 in its files [that] relates to him or her at the time of the request, and disclose the names of the
17 institutional sources of information.”³⁸ Nevada’s statute similarly requires a reporting agency to
18 provide the consumer a copy of his or her consumer report, if requested, and the name of each
19 person who received information about the consumer from the reporting agency “[w]ithin the

21 ³⁴ ECF No. 10 at ¶¶ 136–145.

22 ³⁵ Plaintiff would be wise to follow suit when amending her pleading in this case.

23 ³⁶ 15 U.S.C. §§ 1681g(a), 1681h(a)(1).

³⁷ *Id.* at §§ 1681g(a)(1), (3)(A)(ii).

³⁸ Nev. Rev. Stat. § 598C.130(1).

1 preceding 2 years for purposes of employment” or “[w]ithin the preceding 6 months for any
2 other purpose.”³⁹

3 ***a. Information in the consumer’s file***

4 Section 1681g(a)(1) provides that “[e]very consumer reporting agency shall, upon
5 request, . . . clearly and accurately disclose to the consumer . . . [a]ll information in the
6 consumer’s file at the time of the request” save for full identification numbers and “information
7 concerning credit scores or any other risk scores or predictors relating to the consumer.”⁴⁰ “A
8 consumer’s file includes ‘all information on the consumer that is recorded and retained by a
9 [consumer reporting agency] that might be furnished, or has been furnished, in a consumer report
10 on that consumer.’”⁴¹ Calvillo claims that Experian failed to properly disclose six items of
11 information in her file: (1) behavioral data, (2) uses of information that were not permissible
12 under the FCRA, (3) when and why each soft inquiry was made, (4) that her Bank of the West
13 account was “included” in the bankruptcy after the date of her discharge, (5) account-history data
14 for several of her accounts, and (6) positive-payment data for her Nationstar account.

15 ***i. Behavioral data***

16 Calvillo contends that Experian failed to disclose the behavioral data that it recorded and
17 maintained in her consumer’s file.⁴² She alleges that Experian “amasses and maintains”
18 consumers’ behavioral data, like “household income; purchase, employment, and education

19 ³⁹ *Id.* at §§ 598C.130(1)–(2).

20 ⁴⁰ 15 U.S.C. § 1681g(a)(1)(A)–(B).

21 ⁴¹ *Shaw v. Experian Info. Sols., Inc.*, 891 F.3d 749, 759 (9th Cir. 2018) (quoting *Cortez v. Trans*
Union, LLC, 617 F.3d 688, 711–12 (3d Cir. 2010)).

22 ⁴² ECF No. 10 at ¶¶ 119–26. FCRA § 1681a(g) provides that “[t]he term ‘file,’ when used in
23 connection with information on any consumer, means all of the information on that consumer
recorded and retained by a consumer reporting agency regardless of how the information is
stored.”

1 history; residence type; and whether the consumer “is a ‘dog’ or ‘cat’ person.”⁴³ She asserts that
2 Experian compiles this information in a “marketing database” called “ConsumerView,” which it
3 uses for credit products and services that it sells, like “OmniView,” “TrueTouch,” and
4 “Collection Advantage.”⁴⁴ Cavillo pleads that Experian’s attorneys have made inconsistent
5 assertions in other cases to show that it is plausible that information in the ConsumerView
6 database is recorded and retained by this defendant, not some other member of its corporate-
7 family tree.⁴⁵

8 She alleges that Experian has maintained the ConsumerView database since 1998 and has
9 touted that its “TrueTouch” credit product contains “the ‘freshest’ data on ‘more than 300
10 million individuals[.]’”⁴⁶ Based on these facts, Calvillo alleges that she is informed and believes
11 that “Experian’s TrueTouch database contained information” about her.⁴⁷

12 Calvillo alleges that “[i]nformation from these behavioral databases can be included on a
13 consumer report” because Experian “sells a suite of services called “collection advantage” that
14 “permit the user to combine data from Experian’s File One” and “MetroNet” databases.”⁴⁸ She
15 contends that, “[a]ccording to Experian, the MetroNet ‘core’ database contains ‘demographic
16 information from INSOURCE, the nation’s largest repository of consumer marketing
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19 ⁴³ ECF No. 10 at ¶ 119.

20 ⁴⁴ *Id.* at ¶¶ 119–121.

21 ⁴⁵ *Id.* at ¶ 119 & n.43.

22 ⁴⁶ *Id.* at ¶¶ 119, 121.

23 ⁴⁷ *Id.* at ¶ 121. Referring to TrueTouch as a database appears to be a typo, however, because the
online brochure that Calvillo pleads a link to describes it as a “product.” *See* ECF No. 10 at 31,
n.48 (citing <https://www.experian.com/assets/marketing-services/product-sheets/true-touch.pdf>).

⁴⁸ *Id.* at ¶ 120.

1 demographic data.”⁴⁹ Calvillo later asserts that Experian uses the behavioral data in its File One
2 database to form credit scores.⁵⁰

3 Experian argues that Calvillo lacks Article III standing to assert this claim because she
4 has speculated, but not shown, that she suffered a concrete injury, i.e., that Experian failed to
5 disclose behavioral data that it collected and maintained about her that it might furnish, or has
6 furnished, in a consumer report on her.⁵¹ The Ninth Circuit explained the standard for
7 determining constitutional standing at the dismissal stage in *Maya v. Centex Corporation*.⁵² “For
8 purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing
9 courts must accept as true all material allegations of the complaint and must construe the
10 complaint in favor of the complaining party.”⁵³ “At the pleading stage, general factual
11 allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to
12 dismiss we presume that general allegations embrace those specific facts that are necessary to
13 support the claim.”⁵⁴

14 “To survive a motion to dismiss for lack of constitutional standing, [Calvillo] must
15 establish a ‘line of causation’ between [Experian’s] action and [her] alleged harm that is more
16 than ‘attenuated.’”⁵⁵ As the Seventh Circuit explained in *Gillespie v. Trans Union Corporation*,

18 ⁴⁹ *Id.*

19 ⁵⁰ *Id.* at ¶ 125.

20 ⁵¹ ECF No. 12 at 19.

21 ⁵² *Maya v. Centex Corp.*, 658 F.3d 1060 (9th Cir. 2011).

22 ⁵³ *Id.* at 1068 (internal quotation marks omitted) (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)).

23 ⁵⁴ *Id.* (internal quotation marks and brackets omitted) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), and *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990)).

⁵⁵ *Id.* at 1070 (quoting *Allen v. Wright*, 468 U.S. 737, 757 (1984)).

1 this “require[s] some showing—aside from the existence of the [disputed item of information] in
2 its file—that [Experian] included similar information in a consumer report in the past or that it
3 plans to do so in the future.”⁵⁶

4 Construing the facts in the light most favorable to Calvillo and drawing all inferences in
5 her favor, I cannot conclude that she has plausibly alleged that Experian has furnished behavioral
6 data in a consumer report or plans to do so in the future. The problem is that Calvillo does not
7 link the ConsumerView database that she alleges contains her behavioral data to any consumer
8 report that Experian prepared on her—or even consumer reports generally. Paragraph 120 of the
9 first-amended complaint appears to be intended to serve as a bridge between ConsumerView on
10 the one hand and consumer reports on the other, but other than the bald speculation that
11 “[i]nformation from these databases can be included on a consumer report[.]”⁵⁷ Calvillo alleges
12 no facts to show or allow the reasonable inference that is the case. She instead alleges that
13 Experian sells a suite of services called “collection advantage,” which she contends pulls from
14 Experian’s MetroNet and File One databases, and that MetroNet pulls from Experian’s
15 INSOURCE database. But she doesn’t allege that her behavioral data is contained in any of
16 those databases. Nor does she allege facts to plausibly show or allow the reasonable inference
17 that any of those products constitutes a consumer report.⁵⁸

18 ⁵⁶ *Gillespie v. Trans Union Corp.*, 482 F.3d 907, 909 (7th Cir. 2007) (*Gillespie I*); *c.f. Ramirez v.*
19 *TransUnion, LLC*, — F.3d —, 2020 WL 946973, at *13–14 (9th Cir. Feb. 27, 2020) (explaining
20 that consumers have a concrete informational interest under the FCRA in “being able to monitor
their credit reports and promptly correct inaccuracies”).

21 ⁵⁷ ECF No. 10 at ¶ 120. The databases alleged here appear to be ConsumerView and the “credit
22 product” called TrueTouch. Calvillo contends that ConsumerView contains information from
TrueTouch, and she is informed and believes that TrueTouch contains her “information.” *Id.* at
23 121. Calvillo’s allegations about the TrueTouch database suffer from the same infirmities as her
allegations about the ConsumerView database.

⁵⁸ Calvillo’s allegation that “Experian has provided this ‘behavioral’ data to third parties, either
directly or indirectly, who in turn sells [sic] the data to third party credit decision-makers[.]”

These pleading defects require dismissal under Rule 12(b)(1) for lack of constitutional standing and under Rule 12(b)(6) for failing to state a claim upon which relief can be granted. But it is not yet clear to me that these defects cannot be cured by amendment. So I dismiss Calvillo's claim that Experian violated § 1681g(a)(1) by failing to disclose her behavioral data without prejudice and with leave to amend if she can plead true facts to show that Experian has furnished behavioral data in a consumer report or plans to do so in the future.

ii. *Not-permissible purposes*

Calvillo contends that Experian violated § 1681g(a)(1) when it failed to disclose the fact that information in her consumer’s file “would . . . be made available for purposes not permissible under the FCRA”⁵⁹ Calvillo does not allege that any of her information was actually used for impermissible purposes. She speculates that this occurred because Experian generates something called a “Bullseye report,” which she contends Experian’s expert in another case called “credit information,”⁶⁰ and Experian’s other expert in a different case confirmed that Experian provides regardless of whether the requestor has a permissible purpose for obtaining it. But in the interrogatory responses from the other case that Calvillo pleads as factual support for this claim,⁶¹ Experian explained that “a Bullseye report only reflects information provided to Experian by the requesting data furnisher. Only an Experian data furnisher that reports data to

ECF No. 10 at ¶ 122, is too vague to plausibly state that Experian has furnished behavioral data on consumer reports or intends to do so in the future. Calvillo also links this data to credit-scoring models, *id.* at ¶¶ 124–25, but the FCRA expressly provides that “nothing in . . . paragraph [§ 1681g(a)(1)] shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.” 15 U.S.C. § 1681g(a)(1)(B).

⁵⁹ ECF No. 10 at ¶ 113.

⁶⁰ *Id.* at ¶ 115 & n.41.

⁶¹ *Id.* at ¶ 115 & n.42 (citing *Nichols v. Experian*, No. 2:17-cv-2337, at ECF No. 51-4, pp. 29–31 (D. Nev. Sept. 4, 2018)).

1 Experian can request a Bullseye report, which will only contain trade data reported by the
2 furnisher.”⁶² Experian stated in response to another interrogatory, which Calvillo also pleads as
3 factual support for this claim,⁶³ that it “does not require a subscriber to identify a permissible
4 purpose each time it accesses a Bullseye report, because each subscriber only has access to *its*
5 *own reported data*.”⁶⁴ Experian concluded its interrogatory response by explaining that a
6 “Bullseye report is a data verification tool that provides Experian subscribers with an efficient
7 method to view and verify their own previously reported data for a particular consumer.”⁶⁵

8 Calvillo’s allegations thus show that, by providing a Bullseye report, Experian is
9 allowing an information furnisher to review its own data that it has provided to Experian about a
10 consumer. Calvillo does not contend that a furnisher’s review of the information that it has
11 supplied a consumer reporting agency is an impermissible use of that information under the
12 FCRA. The viability of any such claim is dubious considering that the FCRA imposes duties on
13 information furnishers to report only accurate information and correct and update the information
14 that they report.⁶⁶ By essentially pleading Experian’s own statements about the Bullseye report
15 as the facts supporting her claim that Experian did not disclose that it allowed Calvillo’s
16 information to be used for purposes that are not permissible under the FCRA, Calvillo has pled
17 herself out of that claim. Because it is wholly speculative and futile, even under her own
18 allegations, Calvillo’s claim that Experian violated § 1681g(a)(1) by failing to disclose that her
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21 ⁶² *Nichols*, No. 2:17-cv-2337, at ECF No. 51-4, p. 29.

22 ⁶³ ECF No. 10 at ¶ 115, n.42.

23 ⁶⁴ *Nichols*, No. 2:17-cv-2337, at ECF No. 51-4, p. 31.

⁶⁵ *Id.*

⁶⁶ 15 U.S.C. §§ 1681s-2(a)(1)(A), (a)(2)(A)–(B).

1 information would be made available for not-permissible purposes is dismissed with prejudice
2 and without leave to amend.

3 ***iii. Soft inquiries***

4 Calvillo contends that Experian violated § 1681g(a)(1) when it failed to disclose “in plain
5 English” “when any soft inquiry was made” and “why each soft inquiry” was made.⁶⁷ Experian
6 convincingly argues in its dismissal motion that Calvillo does not allege that Experian has
7 furnished information like soft inquiries on a consumer report or plans to do so in the future, and
8 other courts have acknowledged that Experian simply does not share soft inquiries with third
9 parties.⁶⁸ Calvillo alleges that soft inquiries are “purportedly” shared only with the consumer
10 and she pleads no facts to show otherwise.⁶⁹ Calvillo’s claim that Experian violated
11 § 1681g(a)(1) by failing to disclose when and why each soft inquiry was made is dismissed
12 without prejudice and with leave to amend if she can plead true facts to plausibly show that
13 Experian has furnished soft inquiries on a consumer report or plans to do so in the future.

14 ***iv. Included-in-bankruptcy date***

15 Calvillo contends that Experian violated § 1681g(a)(1) and NRS § 598C.130(1) when it
16 stated on the 2017 Document that her debt to Bank of the West was “‘included’ in her Chapter
17 13 bankruptcy on August 12, 2016, which was *after* the date of [her] Chapter 13 bankruptcy
18 discharge.”⁷⁰ Calvillo contends that this item of information is unclear and inaccurate because it
19 infers that her debt didn’t receive the benefit of her July 15, 2016, bankruptcy discharge.⁷¹

21 ⁶⁷ ECF No. 10 at ¶¶ 110–11.

22 ⁶⁸ ECF No. 12 at 21–22.

23 ⁶⁹ *Compare* ECF No. 10 at ¶ 106, *with id.* at ¶¶ 107–111.

⁷⁰ *Id.* at ¶ 65.

⁷¹ *Id.* at ¶¶ 67–68.

1 Calvillo's allegation that Experian disclosed factually incorrect information misses the
2 mark.⁷² Section 1681g(a)(1) requires consumer reporting agencies to provide a clear and
3 accurate disclosure of all information in the consumer's file, not a clear disclosure of only the
4 accurate information in the file.⁷³ So, to the extent that Calvillo seeks to hold Experian liable
5 under § 1681g(a)(1) for disclosing any factually incorrect information that is in her consumer's
6 file, she does not allege a colorable claim under this statute.

7 What remains of Calvillo's claim is her allegation that the included-in-bankruptcy date is
8 an unclear item of information. She alleges that Experian "correctly" stated on the same
9 document that her Chapter 13 bankruptcy was "'discharged[]' and resolved in July 2016."⁷⁴
10 The document also states that Calvillo's debt to Bank of the West has a "recent balance" of "\$0
11 as of Aug 2016[.]" a "status" of "discharged through Bankruptcy Chapter 13" and that "[t]his
12 account is scheduled to continue on record until Jul 2023."⁷⁵ Calvillo alleges that she was able
13 to compare all of the information stated on the 2017 Document about this debt with her own
14 knowledge and conclude that the included-in-bankruptcy date was factually wrong.⁷⁶ The
15 Seventh Circuit explained in *Gillespie v. Equifax Information Services, LLC* that "a primary
16 purpose[] of the statutory scheme provided by the disclosure in § 1681g(a)(1) is to allow
17 consumers to identify inaccurate information in their credit files and correct this information via
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19 ⁷² Calvillo does not content that Experian's disclosure was inaccurate in the sense that Bank of
20 the West had reported something different to Experian, i.e., that Experian gave her an inaccurate
picture of what was in its file.

21 ⁷³ 15 U.S.C. § 1681g(a)(1) (consumer reporting agencies must "clearly and accurately disclose to
22 the consumer . . . [a]ll information in the consumer's file at the time of the request").

23 ⁷⁴ ECF No. 10 at ¶ 65.

⁷⁵ ECF No. 12-2 at 5.

⁷⁶ ECF No. 10 at ¶ 65.

1 the grievance procedure established in § 1681i.”⁷⁷ Calvillo expressly contends that Experian’s
2 disclosure allowed her to identify inaccurate information in her credit file, so she cannot state a
3 colorable claim that it was unclear or incomprehensible. Because it is futile under her own
4 allegations, Calvillo’s claim that Experian violated § 1681g(a)(1) and NRS § 598C.130(1) by
5 disclosing that her Bank of the West debt was included in bankruptcy after the date of her
6 bankruptcy discharge is dismissed with prejudice and without leave to amend.

7 **v. Account-history data**

8 Calvillo contends that Experian violated § 1681g(a)(1) when it failed to disclose plain-
9 English descriptions for the payment-received dates listed in the account-history tables for three
10 of her accounts.⁷⁸ This claim pertains to both the 2017 Document and the 2018 Document.⁷⁹
11 Calvillo alleges that “Experian lists a three letter code signifying the month that the event
12 occurred, followed by a two digit code—without specifying whether the digits pertain to the
13 month or the year the payment was received.”⁸⁰ She contends that this “confusing” information
14 was furnished for her accounts with Comenity Bank/Burkesol, Comenity/CapitalBank/Big Lots,
15 and Nationstar.⁸¹

16 Experian argues that the information disclosed is clear and comprehensible as a matter of
17 law, but it misconstrues Calvillo’s allegations as pertaining to the information provided in the
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19 ⁷⁷ *Gillespie v. Equifax Info. Servs., LLC*, 484 F.3d 938, 941 (7th Cir. 2007) (*Gillespie II*); accord
20 *Ramirez*, 2020 WL946973, at *14 (explaining that the FCRA’s disclosure requirements protect
21 consumers’ concrete interests “in being able to monitor their credit reports and promptly correct
inaccuracies”).

22 ⁷⁸ ECF No. 10 at ¶¶ 101–05.

23 ⁷⁹ *Id.* at ¶¶ 101–02.

⁸⁰ *Id.* at ¶ 102.

⁸¹ *Id.*

1 payment-history table when, in reality, they concern the information provided in the *account-*
2 history table.⁸² Experian’s argument prevails but not for the reasons it cites.

3 To make matters clear, below is screenshot of the account-history table for the first
4 Nationstar account listed on the 2017 Document.⁸³ The colored rectangle notations are my own.
5 The red rectangle contains the information that Calvillo contends is confusing—the line that
6 provides “DPR” or “[d]ate payment received” data. But when all of the information in the table
7 is viewed together, as intended with a table format, it is clear that the two-digit numerals in the
8 red rectangle identify the days that Nationstar received Calvillo’s payment, i.e., “Dec17” is
9 December 17th and “Feb25” is February 25th. Though similarly formatted, it is also clear that
10 the two-digit numerals listed in the green rectangle identify the year when the information listed
11 in the column below was reported, i.e., “Jan17” is January 2017 and “Feb16” is February 2016.⁸⁴

Account history - If your creditor reported your account balances to us, we list them in this section as additional information about your account. Your balance history may also include your credit limit and high balance c
the original loan amount for an installment loan. This section also includes the scheduled payment amounts, amounts actually paid and the dates those payments were made. ND: No Data.

	Jan17	Oct16	Sep16	Aug16	Jul16	Jun16	May16	Apr16	Feb16	Oct15	Jul15	Apr15
AB	261,005	261,362	261,540	261,540	261,954	262,130	262,336	263,157	263,564	264,373	264,812	ND
DPR	Dec17	Oct06	Jul08	Jul08	Jul08	Jun07	May09	Apr22	Feb25	Oct09	Jul16	Apr17
SPA	800	804	804	804	804	804	725	718	718	718	643	ND
AAP	800	804	663	414	2,256	2,098	3,523	2,097	1,366	718	648	ND

The original amount of this account was \$272,000

15 So, focusing on the information in the first column—the first blue rectangle—the table
16 provides that Nationstar reported in January 2017 (“Jan17”): an account balance (“AB”) of
17 “261,005”; date payment received as December 17, 2016 (“Dec17”); scheduled payment amount
18 (“SPA”) of “800”; and actual payment amount (“AAP”) of “800.” Focusing on the information
19 in the ninth column—the second blue rectangle—the table provides that Nationstar reported in

22 ⁸² Compare ECF No. 12 at 18, with ECF No. 10 at ¶¶ 101–02.

23 ⁸³ See ECF No. 12-2 at 8 (rectangles added).

⁸⁴ The bolded font used for the data listed in the green rectangle indicates that it is a heading.

1 February 2016 (“Feb16”): an account balance of “263,564”; date payment received as February
2 25, 2016; scheduled payment amount of “718”; and actual payment amount of “1,366.”

3 The account-history table for the second Nationstar account listed on the 2017 Document
4 contains an identical format and similar information.⁸⁵ There is no account-history table on the
5 2017 Document for Calvillo’s Comenity/CapitalBank/Big Lots account.⁸⁶ Calvillo’s Comenity
6 Bank/Burkesol account does not appear on the 2017 Document at all.⁸⁷ That account, however,
7 appears on the 2018 Document and its account-history table shows the same information as the
8 2017 Document also in table format.⁸⁸ The same is true of the account-history table for
9 Calvillo’s Comenity/CapitalBank/Big Lots account on the 2018 Document.⁸⁹ None of Calvillo’s
10 Nationstar accounts appear on the 2018 Document.⁹⁰

11 Construing the facts in the light most favorable to Calvillo and drawing all inferences in
12 her favor, I cannot conclude that she has shown that it is plausible that the account-history tables
13 and their notations are not “clear and comprehensible to the average consumer.”⁹¹ Calvillo’s
14 claim that Experian violated § 1681g(a)(1) by not disclosing plain-English descriptions of the
15 notations in the account-history table is dismissed with prejudice and without leave to amend.

16 . . .

17 . . .

19 ⁸⁵ See ECF No. 12-2 at 12.

20 ⁸⁶ *Id.* at 11.

21 ⁸⁷ See generally ECF No. 12-2.

22 ⁸⁸ See ECF No. 12-3 at 7 (containing horizontal grid lines and discussion of what Calvillo’s high
balance was during two different spans of time that are noted in the table itself).

23 ⁸⁹ See *id.*

⁹⁰ See generally ECF No. 12-3.

⁹¹ *Shaw*, 891 F.3d at 760.

1 **vi. Positive-payment data**

2 Calvillo contends that Experian stated on the 2016 Document that her Nationstar account
3 had a recent balance of \$261,954 and a monthly payment of \$804 but did not report any of the
4 payments that she made under her Chapter 13 plan.⁹² She claims that Experian violated
5 § 1681g(a)(1) when it failed to disclose her positive-payment data on the 2016 Document.⁹³
6 Experian does not move to dismiss this claim, so Calvillo may proceed on it for now.

7 **b. Procurers of consumer reports**

8 Calvillo alternatively alleges that, if it is determined that Experian does not “store” her
9 behavioral data itself, then it violated § 1681g(a)(3)’s and NRS § 598C.130(2)(b)’s requirements
10 that it disclose the identity of all persons who procured her consumer report, because the
11 documents it provided her did not include any soft inquiries corresponding with the transmission
12 of her behavioral data to any third party.⁹⁴ Experian moves in a footnote to dismiss these
13 alternative claims on several grounds.⁹⁵ I understand these claims to alternatively allege that
14 Experian collected Calvillo’s behavioral data but did not store it; rather, Experian transmitted
15 that data to a third party like Experian Marketing. The transmission of data from Experian to a
16 third party would be a soft inquiry. With this understanding and for the reasons discussed above
17 in section I(C)(1)(a)(iii), I dismiss Calvillo’s alternative claims without prejudice and with leave
18 to amend if she can plead true facts to plausibly show that Experian has furnished soft-inquiry
19 information on a consumer report or plans to do so in the future.

20
21 _____
22 ⁹² ECF No. 10 at ¶¶ 33–34.

23 ⁹³ *Id.* at ¶ 47.

⁹⁴ *Id.* at ¶¶ 127–29.

⁹⁵ ECF No. 12 at 21 n.9.

1 2. *Failure-to-use-reasonable-procedures claims under FCRA § 1681e(b)*

2 Calvillo alleges that Experian violated its duty under § 1681e(b) to use reasonable
3 procedures to assure the maximum possible accuracy of information contained in consumer
4 reports when it (1) reported that her Bank of the West account was included in bankruptcy after
5 the date of her bankruptcy discharge and (2) failed to report the timely and full payments that she
6 allegedly made on her Nationstar account under the terms of her Chapter 13 bankruptcy plan.⁹⁶
7 Experian argues that these claims fail because neither is an inaccuracy under the FCRA and
8 Calvillo has not plausibly alleged that these items were furnished or suppressed on a consumer
9 report on her.⁹⁷

10 I begin with whether this information has been or is at risk of being furnished on a
11 consumer report. Calvillo contends that the included-in-bankruptcy information was stated on
12 the 2017 Document,⁹⁸ and she has plausibly alleged that that document is a consumer report that
13 Experian sent her under § 1681i(a)(6)(B)(ii).⁹⁹ Calvillo contends that the payment-history data
14 was suppressed on the 2016 Document,¹⁰⁰ but she has not plausibly alleged that document is a
15 consumer report. Rather, she contends that document is a disclosure that Experian provided her
16 under § 1681g.¹⁰¹ Calvillo's claim based on the allegedly suppressed positive-payment data
17 falters at this step, so I do not consider it further.

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19 ⁹⁶ ECF No. 10 at ¶¶ 27, 46, 95–99.

20 ⁹⁷ ECF No. 12 at 4–8.

21 ⁹⁸ ECF No. 10 at ¶¶ 61–65.

22 ⁹⁹ *Id.* at ¶ 31.

23 ¹⁰⁰ *Id.* at ¶ 33.

¹⁰¹ *Id.* at ¶ 31. I am not persuaded by Calvillo's theory that everything in her consumer's file is at risk of dissemination to third parties simply because Experian's procedures and the FCRA permit consumers to direct consumer reporting agencies to send a post-reinvestigation consumer report to third parties. *See, e.g., id.* at ¶¶ 10–11, 69. The main stumbling block in Calvillo's

1 The next question is whether Calvillo has plausibly alleged an actual inaccuracy for the
2 FCRA’s purposes. Indeed, to sustain a claim under either § 1681e or § 1681i, “a consumer must
3 first make a prima facie showing of inaccurate reporting by the CRA.”¹⁰² Information is
4 inaccurate for purposes of these statutes if it is either “patently incorrect or is misleading in such
5 a way and to such an extent that it can be expected to adversely affect credit decisions.”¹⁰³
6 Patently incorrect means, “at the very least, information that is inaccurate on its face”¹⁰⁴

7 Calvillo has plausibly alleged that a post-discharge included-in-bankruptcy date is
8 inaccurate for the FCRA’s purposes because it is patently wrong. She alleges that the legal
9 status of her debt changed when her Chapter 13 plan was confirmed and again when she was
10 discharged from bankruptcy, not later as Experian’s report implies.¹⁰⁵ Calvillo may therefore
11 proceed on her claim that Experian violated § 1681e(b) when it reported on the 2017 Document
12 that her Bank of the West account was included in bankruptcy after the date of her discharge.
13 But Calvillo’s claim that Experian violated § 1681e(b) by suppressing positive-payment data for
14 her Nationstar account on the 2016 Document is dismissed without prejudice and with leave to
15 amend if she can plead true facts to show that Experian suppressed that information on a
16 consumer report on her.

17 . . .

18 . . .

19
20 theory is the fact that what Experian would be furnishing to a third party is the consumer’s
21 dispute about an item of information in her file and the results of the reinvestigation of that
22 dispute, not the disputed item of information itself devoid of any explanation or context.

22 ¹⁰² *Shaw*, 891 F.3d at 756 (quotations omitted).

23 ¹⁰³ *Id.* (quotation omitted).

¹⁰⁴ *Drew v. Equifax Info. Servs., LLC*, 690 F.3d 1100, 1108 (9th Cir. 2012) (quotation omitted).

¹⁰⁵ ECF No. 10 at ¶¶ 16–18.

1 **3. *Failure-to-reinvestigate claim under FCRA § 1681i***

2 Calvillo alleges that Experian violated its duty under § 1681i to conduct a reasonable
3 reinvestigation after she disputed its conduct of suppressing the positive-payment data for her
4 Nationstar account.¹⁰⁶ An actual inaccuracy is an element of Calvillo’s prima facie case under
5 § 1681i.¹⁰⁷ The inaccuracy she alleges is that Experian simply deleted the account from her
6 credit file—rather than reporting its full details—after she disputed that Experian was
7 suppressing the positive-payment data but not the recent-balance and recent-payment
8 amounts.¹⁰⁸ To show that deleting this account was so misleading that it could be expected to
9 negatively affect credit decisions, Calvillo pleads facts to show that payment history comprises a
10 large piece of credit scores and creditworthiness.¹⁰⁹ She also argues that, under the FCRA,
11 Experian could delete this account only if its reinvestigation proved it to be inaccurate,
12 incomplete, or unverifiable.¹¹⁰ Although thin, Calvillo has plausibly alleged that deleting this
13 account instead of reporting its full details was misleading and could be expected to negatively
14 affect credit decisions. Calvillo may therefore proceed on her claim under § 1681i.

15 **4. *Fraud claims under NRS Chapter 598***

16 For her final claim, Calvillo contends in four conclusory sentences spread over two
17 paragraphs that Experian violated NRS §§ 598.0915(5) and 598.0923(3) when it sold her data for
18 purposes that are not permissible under the FCRA and misrepresented that her data would be
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21 ¹⁰⁶ *Id.* at ¶¶ 33–45.

22 ¹⁰⁷ *Carvalho v. Equifax Info. Svcs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010).

23 ¹⁰⁸ ECF No. 10 at ¶ 41.

¹⁰⁹ *Id.* at ¶¶ 51–54.

¹¹⁰ ECF No. 24 at 9 (citing 15 U.S.C. § 1681i(a)(5)(A)).

1 used for purposes that are permissible under that Act only.¹¹¹ These claims fail for the reasons
2 that Experian proffers in its dismissal motion¹¹² and also because Calvillo has effectively pled
3 herself out of a viable claim that Experian failed to disclose that her information would be made
4 available for purposes that are not permissible under the FCRA.¹¹³ Thus, Calvillo's claims under
5 NRS Chapter 598 are dismissed with prejudice and without leave to amend.

6 **5. Willfulness and actual-damage allegations**

7 Calvillo contends that Experian's violations were either willful or negligent,¹¹⁴ and she
8 pleads that she "suffered actual damages, including . . . out-of-pocket expenses in the form of list
9 time and transportation expenses, as well as stress, anxiety, fear, and frustration, which she
10 believes have exacerbated her existing medical conditions."¹¹⁵ She also vaguely alleges that her
11 creditworthiness has been damaged.¹¹⁶ Experian argues that Calvillo's willfulness allegations
12 are not sufficiently pled, her time-lost damage is not recoverable as a matter of law, and her
13 emotional-distress allegations are legally deficient without pleading that her consumer report was
14 sent to a third party.¹¹⁷ I address these arguments only in the context of Calvillo's three claims
15 that I have determined she may proceed on, because I have dismissed all of her other claims.
16 Those claims are (1) under § 1681g(a)(1) alleging that Experian failed to disclose positive-
17 payment data for her Nationstar account, (2) under § 1681e(b) alleging that Experian failed to

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¹¹¹ ECF No. 10 at ¶¶ 116–17.

20 ¹¹² See ECF No. 12 at 23.

21 ¹¹³ See discussion *supra* at section I(C)(1)(a)(ii).

22 ¹¹⁴ See, e.g., ECF No. 10 at ¶¶ 49, 94–95, 99, 130, 132, 137.

23 ¹¹⁵ *Id.* at ¶¶ 50, 134.

¹¹⁶ *Id.* at ¶ 51.

¹¹⁷ ECF No. 12 at 23–25.

1 ensure accuracy of information about her Bank of the West account on the 2017 Document, and
2 (3) under § 1681i alleging that Experian failed to reasonably reinvestigate after she disputed its
3 conduct of suppressing positive-payment data for her Nationstar account.

4 ***a. Willfulness allegations***

5 A willful violation of the FCRA concerns acts that are done knowingly or in reckless
6 disregard for the FCRA’s requirements.¹¹⁸ “[W]illfulness reaches actions taken in ‘reckless
7 disregard of statutory duty,’ in addition to actions ‘known to violate the Act.’”¹¹⁹ “A party does
8 not act in reckless disregard of the FCRA ‘unless the action is not only a violation under a
9 reasonable reading of the statute’s terms, but shows that the company ran a risk of violating the
10 law substantially greater than the risk associated with a reading that was merely careless.’”¹²⁰
11 “Conditions of a person’s mind may be alleged generally” at the pleading stage.¹²¹ For a willful
12 violation, a plaintiff may recover punitive damages, reasonable costs and fees, and either actual
13 or statutory damages.¹²² For a negligent violation, however, a plaintiff may recover only actual
14 damages and reasonable costs and fees.¹²³

15 Calvillo alleges that Experian’s conduct was willful because it “knows the types of credit
16 information [that] it offers to third parties; knows the sources of its information; knows how it
17 stores . . . data or, alternatively, the persons who have accessed th[e] data; and has complete
18
19

20 ¹¹⁸ *Safeco Ins. Co. of Am. v. Geico Gen. Ins. Co.*, 551 U.S. 47, 56–60 (2007).

21 ¹¹⁹ *Syed v. M-I, LLC*, 853 F.3d 492, 503 (9th Cir. 2017) (quoting *Safeco*, 551 U.S. at 56–57).

22 ¹²⁰ *Id.* (quoting *Safeco*, 551 U.S. at 69).

22 ¹²¹ Fed. R. Civ. P. 9(b).

23 ¹²² 15 U.S.C. § 1681n.

¹²³ *Id.* at § 1681o.

1 control over the format and presentation of its consumer disclosures.”¹²⁴ These vague offerings
2 are not sufficient to state a claim of willful or reckless violation. Calvillo does allege, however,
3 at least for her included-in-bankruptcy-date claim, that Experian “disregarded industry guidance,
4 its own consent agreements, and its own practices” and “disregarded other information available
5 to it from either its own data furnishers or the public bankruptcy records.”¹²⁵ Calvillo has
6 sufficiently alleged that Experian willfully violated § 1681e(b) by failing to ensure accuracy of
7 the information it furnished about her Bank of the West account on the 2017 Document. She has
8 not, however, plausibly alleged that Experian’s other two violations were willful. But it is not
9 yet clear that she cannot do so. Thus, I grant Calvillo leave to amend to her willfulness
10 allegations as to those claims.

11 ***b. Actual-damage allegations***

12 The Ninth Circuit has recognized that actual damages can include “recovery for
13 emotional distress and humiliation.”¹²⁶ Experian argues that Calvillo has not plausibly shown
14 that she is entitled to damages for her emotional suffering because she fails to allege that any
15 third party actually accessed her consumer report.¹²⁷ Experian is mistaken as Calvillo expressly
16 contends that the 2017 Document and 2018 Document show “that numerous entities had
17 accessed [her] credit information[,] . . . [i]n particular, the [2017 Document] show[s] the
18 presence of one ‘hard’ inquiry and twenty-seven ‘soft’ inquiries” and the 2018 Document shows
19 “one ‘hard’ inquiry and forty ‘soft’ inquiries.”¹²⁸ This alleged damage is sufficiently pled.

21 ¹²⁴ ECF No. 10 at ¶¶ 130, 132.

22 ¹²⁵ *Id.* at ¶ 94.

23 ¹²⁶ *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995).

¹²⁷ ECF No. 12 at 24.

¹²⁸ ECF No. 10 at ¶ 32.

1 Calvillo also contends that she was harmed because she “lost time” addressing Experian’s
2 FCRA violations. This alleged harm fails because it is vague and unsupported by any factual
3 allegations. It also fails because Calvillo provides no authority to support her contention that this
4 harm is compensable under the FCRA. The Ninth Circuit has recognized that lost wages from
5 time spent dealing with credit problems is recoverable under the FCRA.¹²⁹ But Calvillo pleads
6 none of these facts. Her lost-time allegation is therefore dismissed without prejudice and with
7 leave to amend if she can plead true facts to remedy this deficiency.¹³⁰

8 **II. Motion to stay discovery [ECF No. 18]**

9 Experian moves to stay discovery pending a ruling on its motion to dismiss Calvillo’s
10 claims.¹³¹ I have considered the merits of Experian’s dismissal motion and determined that five
11 of Calvillo’s claims must be dismissed with prejudice and without leave to amend. But I also
12 determined that Calvillo may proceed on a few of her claims and I granted her leave to amend a
13 handful of other claims. Because I have decided the merits of Experian’s dismissal motion and
14 found that Calvillo may proceed on a few of her claims, I deny Experian’s motion to stay
15 discovery.

16 . . .

17 . . .

19 ¹²⁹ *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1173–74 (9th Cir. 2009).

20 ¹³⁰ In determining the issues raised in Experian’s dismissal motion, I considered the Ninth
21 Circuit’s recent decision in *Ramirez v. TransUnion, LLC*—the “new, controlling authority” that
22 Calvillo moves to supplement the record with. ECF No. 63 at 2 (citing *Ramirez v. TransUnion,*
23 *LLC*, — F.3d —, 2020 WL 946973 (9th Cir. Feb. 27, 2020)). There is some overlap between
Calvillo’s claims and the claims alleged in *Ramirez*, but the facts in *Ramirez* are so materially
distinguishable from the facts alleged here that the Ninth Circuit’s ultimate holdings in that case
are not of much use to Calvillo.

¹³¹ ECF No. 18.

1 **III. Motion for a protective order [ECF No. 19]**

2 Finally, Experian moves for a protective order prohibiting Calvillo from seeking any
3 discovery pending a ruling on its motion to stay discovery until the court determines its dismissal
4 motion.¹³² Because I have now resolved the issues raised in Experian's dismissal motion and
5 denied its motion to stay discovery pending that determination, I deny as moot its motion for a
6 protective order pending a ruling on its motion to stay discovery.

7 **Conclusion**

8 Accordingly, IT IS HEREBY ORDERED that Experian's motion to dismiss Calvillo's
9 amended claims **[ECF No. 12] is GRANTED in part:**

10 • Calvillo's claims under 15 U.S.C. § 1681g(a)(1), alleging that Experian failed to
11 disclose behavioral and soft-inquiry data, are dismissed without prejudice and with leave to
12 amend;

13 • Calvillo's claims under 15 U.S.C. § 1681g(a)(1), alleging that Experian failed to
14 disclose impermissible-use, included-in-bankruptcy, and account-history data, are dismissed with
15 prejudice and without leave to amend;

16 • Calvillo may proceed on her claim under 15 U.S.C. § 1681g(a)(1) alleging that
17 Experian failed to disclose positive-payment data for her Nationstar account;

18 • Calvillo's claims under 15 U.S.C. § 1681g(a)(3) and NRS 598C.130, alleging that
19 Experian failed to disclose the identity of all persons who procured her consumer report, are
20 dismissed without prejudice and with leave to amend;

21 • Calvillo may proceed on her claim under 15 U.S.C. § 1681e(b) alleging that
22 Experian failed to use reasonable procedures to ensure the accuracy of information when it
23

¹³² ECF No. 19.

1 reported on the 2017 Document that her Bank of the West account was included in bankruptcy
2 after the date of her discharge;

3 • Calvillo's claim under 15 U.S.C. § 1681e(b), alleging that Experian failed to use
4 reasonable procedures to ensure the accuracy of information when it suppressed positive-
5 payment data for her Nationstar account, is dismissed without prejudice and with leave to
6 amend;

7 • Calvillo may proceed on her claim under 15 U.S.C. § 1681i alleging that Experian
8 failed to conduct a reasonable reinvestigation after she disputed its conduct of suppressing
9 positive-payment data for her Nationstar account;

10 • Calvillo's claims under NRS Chapters 598 and 41 are dismissed with prejudice
11 and without leave to amend; and

12 • Calvillo's willfulness and actual-damage allegations are dismissed without
13 prejudice in part and with leave to amend.


14 Experian's dismissal motion is **DENIED** in all other respects.

15 IT IS FURTHER ORDERED that Calvillo has until **April 13, 2020**, to file her second-
16 amended complaint curing the deficiencies outlined in this order. If Calvillo fails to timely
17 amend her pleading, this case will proceed only on her claims (1) under § 1681g(a)(1) alleging
18 that Experian negligently failed to disclose positive-payment data for her Nationstar account, (2)
19 under § 1681e(b) alleging that Experian willfully or negligently failed to ensure accuracy of
20 information about her Bank of the West account on the 2017 Document, and (3) under § 1681i
21 alleging that Experian negligently failed to reinvestigate her positive-payment dispute.

22 IT IS FURTHER ORDERED that Experian's motion to stay discovery [ECF No. 18] is
23 **DENIED**.

1 IT IS FURTHER ORDERED that Experian's motion for a protective order [ECF No. 19]
2 is **DENIED** as moot.

3 IT IS FURTHER ORDERED THAT Calvillo's motion for leave to submit new authority
4 without further briefing [ECF Nos. 45, 46 (corrected image)] is **GRANTED**.

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U.S. District Judge Jennifer A. Dorsey
March 23, 2020
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